

REMARKS

By this Amendment, claims 5, 11, 16, and 20 have been amended, claims 4 and 10 have been cancelled, and new claims 30-35 have been added. Accordingly, claims 1-3, 5-9, and 11-35 are currently pending in this Application. New claims 30-35 are fully supported by the originally-filed Application and no new matter has been added by this Amendment.

In the Office Action dated October 8, 2008, claims 1-29 were rejected under 35 U.S.C. §102(e) as anticipated by, or in the alternative, under 35 U.S.C. §103(a) as obvious over U.S. Patent Publication No. U.S. 2002/0039869 to Achille ("Achille").

Achille Does Not Disclose Or Suggest

A Superabsorbent Encapsulated In A Wax

Applicants respectfully traverse the rejection of claims 1, 7, and 23-27 as either anticipated by or obvious over Achille. Achille does not disclose or suggest, among other things, a wax containing a superabsorbent, as recited by independent claims 1 and 7, a superabsorbent encapsulated in a wax, as recited by independent claims 23 and 25, a liquid water absorbing compound encapsulated in a wax, as recited by independent claims 24 and 26, or a water absorbing means and means encapsulating said water absorbing means for preventing water vapor from being absorbed by said water absorbing means, as recited by independent claim 27.

Instead, Achille teaches a composition including a superabsorbent polymer, a thermoplastic resin, and optionally, a surfactant. Although Achille does teach the use of low and high molecular weight waxes, Achille only refers to these waxes as optional additives that *may* be added to the blend composition (see, for example, Achille at ¶¶31 and 38). Achille merely mentions such waxes as being incidental components to the composition that do not significantly effect the desired characteristics of the resulting composition.

Claims 1 and 7 specifically recite the wax containing the superabsorbent, claims 23 and 25 specifically recite the superabsorbent encapsulated in the wax, and claims 24 and 26 specifically recite the liquid water absorbing compound encapsulated in the wax. Such a teaching is, however, wholly absent from Achille. Moreover, claim 27 is in “means plus function” format, and Applicants submit that Achille does not teach the recited components or their recited functions. In particular, Achille does not disclose or suggest a water absorbing means, and a means encapsulating said water absorbing means for preventing water vapor from being absorbed by said water absorbing means, as recited by independent claim 27. Other than pointing out that Achille teaches the use of waxes in a blend, the Office Action is silent with respect to the specific recitations of claims 1, 7, and 23–27, discussed above.

Since Achille does not disclose or suggest, among other things, a wax containing a superabsorbent, as recited by independent claims 1 and 7, a

superabsorbent encapsulated in a wax, as recited by independent claims 23 and 25, a liquid water absorbing compound encapsulated in a wax, as recited by independent claims 24 and 26, and a water absorbing means, and means encapsulating said water absorbing means for preventing water vapor from being absorbed by said water absorbing means, as recited by independent claim 27, Applicants traverse the rejection of claims 1, 7, and 23-27.

Reconsideration is respectfully requested.

Claims 2, 3, 5, 6, 15-18, 28, and new claims 30-35 depend directly or indirectly from claim 1, and claims 8, 9, 11-14, 19-22, and 29 depend directly or indirectly from claim 7. These dependent claims are therefore allowable for at least the same reasons stated above with regard to claims 1 and 7, respectively. In addition, each of these dependent claims recites unique combinations that are neither taught nor suggested by the applied prior art, and therefore each is also separately patentable.

Achille Does Not Disclose Or Suggest

A Channeling Agent Or A Channeling Means

In addition, Achille does not disclose or suggest, for example, among other things, a channeling agent, as recited by independent claims 1, 7, and 23-26, or a channeling means, as recited by independent claim 27, nor does the Office Action identify such a teaching in Achille with any clarity. Instead, the Office Action states, "the cellulosic or starch-graft coolymers [sic] described

by the reference will read on the presently claimed channelling agent.” (Office Action, p. 3., ll. 19–21.) Each of the compounds cited by the Office Action, however, are specifically described in Achille as being *preferred superabsorbent polymers*, not channeling agents, as required by claims 1, 7, and 23–26, or channeling means, as required by claim 27. In particular, contrary to the assertions in the Office Action, Achille specifically identifies “cellulosic or starch-graft copolymers, such as starch-g-poly(acrylonitrile), starch-g-poly(acrylic acid) and the like” as being “more preferred superabsorbent polymers.” (Achille, ¶19, ll. 4–7.) Thus, the Office Action mischaracterizes these polymers despite the clear teachings in Achille.

Achille Does Not Disclose Or Suggest Polymers Conducting Liquid Water Through A Wax To A Superabsorbent Or Not Conducting Water Vapor

Moreover, even if one skilled in the art could construe the polymers identified by the Office Action as being a channeling agent or a channeling means, as recited by the independent claims in this Application, Achille still does not disclose or suggest the polymers identified by the Office Action either conducting liquid water through a wax to a superabsorbent, or not conducting water vapor, as recited by independent claims 1, 7, and 23–27.

As pointed out by the Office Action, Achille teaches that the amount of superabsorbent polymer to be included in the composition is varied depending upon, for example, “the desired level of blocking, absorbing or stopping the

migration of water and/or other fluids in the end use application.” (Achille, ¶21, ll. 1–9.) Achille merely mentions the level of blocking, absorbing or stopping the migration of water and other fluids, but makes no mention of conducting liquid water through a wax to a superabsorbent or of not conducting water vapor, as recited by independent claims 1, 7, and 23–27. As the Office Action concedes at the top of page 4, such a teaching simply cannot be found in Achille. Thus, for at least these additional reasons, Applicants respectfully traverse the rejection of independent claims 1, 7, and 23–27 as either anticipated by or obvious over Achille. Reconsideration is respectfully requested.

Claims 2, 3, 5, 6, 15–18, 28, and new claims 30–35 depend directly or indirectly from claim 1, and claims 8, 9, 11–14, 19–22, and 29 depend directly or indirectly from claim 7. These dependent claims are therefore allowable for at least the same reasons stated above with regard to claims 1 and 7, respectively. In addition, each of these dependent claims recites unique combinations that are neither taught nor suggested by the applied prior art, and therefore each is also separately patentable.

#### Inherency Rejection Is Not Proper

Moreover, as clearly stated in the Manual of Patent Examining Procedure, when relying upon the theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that

the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art. (M.P.E.P. §2112, IV.) The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic, and inherency may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. (M.P.E.P. §2112, IV.)

Despite noting the clear voids in the applied prior art, however, the Office Action asserts that it is reasonable to presume that the properties of conducting liquid water through a wax to a superabsorbent and not conducting water vapor are inherent to the composition of Achille. The Office Action points only to the use of like materials as support for this presumption. Such an unfounded presumption is not adequate for rejecting the independent claims in this case based on either 35 U.S.C. §102 or 103. At the very least, in this case the Examiner has not provided any basis in fact and/or technical reasoning to reasonably support the determination stated in the Office Action that the claimed channeling agent conducts liquid water through the wax to the superabsorbent, but does not conduct water vapor, necessarily flows from the teachings in Achille. For at least the reasons discussed above, and because the rationale and the evidence set forth in the Office Action do not rise to the level required by the M.P.E.P. for an inherency rejection under 35 U.S.C. §102 or 103,

the rejection of independent claims 1, 7, and 23-27 is improper and should be withdrawn. Reconsideration is respectfully requested.

Should the Examiner consider that additional amendments are necessary to place this Application in condition for allowance, the favor is requested of a telephone call to the undersigned for the purposes of discussing such amendments.

Please grant any extensions of time necessary for the filing of this Amendment. Please also charge any additional required fees due to our deposit account 03-3875.

Respectfully submitted,

Dated: April 6, 2009



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